

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA,                      Docket No. 3:20CR208

Plaintiff,

v

MANISH RAJ GUPTA,                                      June 26, 2020

Defendant.

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TRANSCRIPT OF CONTINUED DETENTION HEARING  
BEFORE THE HONORABLE JAMES G. CARR  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

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For the Defendant:

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Court Reporter:

Angela Nixon, RMR, CRR

1                   COURTROOM DEPUTY: The Court is now in session  
2 with the Honorable James G. Carr presiding. The case  
3 before The Court is USA versus Manish Raj Gupta, case  
4 3:20CR208, matter call for continued detention hearing.  
5 Government is represented by Tracey Tangeman and Carol  
6 Skutnik. Defense is represented by Eric Long, Ian Friedman  
7 and Madelyn Grant.

8                   THE COURT: Mr. Friedman, I think the matter was  
9 with you, and we both had noon time commitments when we  
10 adjourned; is that correct?

11                  MR. FRIEDMAN: That is correct, Your Honor.  
12 Thank you.

13                  THE COURT: Okay. Go ahead.

14                  MR. FRIEDMAN: Eric, do you have any of the  
15 family in the waiting room?

16                  COURTROOM DEPUTY: None of the family is in the  
17 waiting room, but I can put them in one if you'd like.

18                  MR. FRIEDMAN: Eric, is mom --

19                  MRS. GUPTA: Yeah, mom's here.

20                  MR. FRIEDMAN: Okay. All right.

21                  THE COURT: Excuse me, if we can have the witness  
22 sworn please.

23                               LATA RANI GUPTA,  
24 was herein, called as if upon examination, was first duly  
25 sworn, as hereinafter certified, and said as follows:

1 COURTROOM DEPUTY: Thank you, ma'am.

2 MR. FRIEDMAN: Thank you.

3 DIRECT EXAMINATION

4 BY MR. FRIEDMAN:

5 Q. Ms. Gupta, I don't know if you can see me or not.

6 A. I can see you.

7 Q. All right. So Ms. Gupta, are you aware of the  
8 nature of these allegations against your son?

9 A. Yes.

10 Q. Okay.

11 A. Yes, I am.

12 Q. All right. And not perhaps the specific  
13 evidence, but we have spoken about what this case is about,  
14 haven't we?

15 A. Yes.

16 Q. Okay. So this hearing only deals with whether or  
17 not your son should be detained or released during this  
18 time.

19 How old are you?

20 A. I was born in '43 so I have to be 76. Yes, 76,  
21 almost 77.

22 Q. Okay. And where do you live?

23 A. I live in Michigan on West Shore Drive in Orchard  
24 Lake.

25 Q. And should -- how far is that from your son and

1 daughter-in-law's house?

2 A. About hour and a half.

3 Q. Okay. And prior to this case, did you go over to  
4 their house at times?

5 A. Yes, I -- we go each other places, you know, over  
6 the weekend, not every weekend, but we go quite -- we visit  
7 each other. We are on a lake, and summer they come here,  
8 and other times we go there.

9 Q. So Ms. Gupta, you said you would go there on the  
10 weekends. And we know your husband drives. Do you drive?

11 A. Yes, I do drive. I drive better than him.

12 Q. And are you working now, not working?

13 A. I'm not working anymore.

14 Q. Okay. So let me ask you, you know, prior to this  
15 case, you were not aware of any of the alleged conduct  
16 that's accepted for purposes of this hearing?

17 A. No, I can't even believe now unless I, you know,  
18 he's not that boy.

19 Q. All right. But accepting what the allegations  
20 are now, would you be willing, if The Court were to release  
21 him to his home, would you be willing to, if The Court  
22 imposed a responsibility on you, would you agree to comply  
23 with all of those requirements and orders by The Court?

24 A. Yes, I do.

25 Q. Okay.

1 A. I --

2 Q. So -- okay, so let me ask you, Shraddha is home  
3 now, but should there be times that she has to leave the  
4 house and you have to be there to supervise your son, is  
5 there anything that would prevent you from doing that?

6 A. No. I have nothing going -- it's just me and my  
7 husband. We live here, and I can go any time. Nothing  
8 here to hold me from not going there.

9 Q. Okay. All right. And I think that -- let's just  
10 do a hypothetical for the moment. If The Court stated to  
11 you that you have an obligation to contact The Court or  
12 someone at the court if your son was doing anything  
13 violative of a court order, would you be willing to do  
14 that?

15 A. Sure. I would respect The Court. I don't want  
16 anymore trouble.

17 Q. All right. Thank you very much.

18 THE COURT: Okay Ms. Tangeman, any questions of  
19 Mrs. Gupta?

20 MS. TANGEMAN: Yes, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. TANGEMAN:

23 Q. Good morning, ma'am.

24 A. Good morning.

25 Q. You were just asked about your age, and you said

1 you were born in what year?

2 A. '43, 1943.

3 Q. So that makes you 77; is that correct?

4 A. My birthday is next month.

5 THE COURT: She's still 76.

6 BY MS. TANGEMAN:

7 Q. Thank you. Ma'am, you -- you stated that you do  
8 not work at this time. Did you work at one time?

9 A. Yes, I worked with my husband. Whenever there  
10 was need, I would go in.

11 Q. Okay. Kind of help with the office?

12 A. Yes.

13 Q. And you are originally from India; is that  
14 correct?

15 A. Yes, I was born there.

16 Q. And do you still have family there?

17 A. My family, everybody's gone except my one brother  
18 who's 82 something, he's alone there, so that's all.

19 Q. Did you and your husband travel there with your  
20 son over the years?

21 A. Yes. Not -- we went there, I think, four years  
22 ago. There was a wedding, and because they didn't assume  
23 Shraddha, his wife, in my family because -- didn't get  
24 around, they live there too, and both of us are here, and  
25 the two -- my sister-in-law died, they wanted to meet, so

1 we all went so that they can see my son and his family.

2 Q. Understandable.

3 A. After that my sister-in-law died, and so my  
4 brother is alone now, and we went.

5 Q. And fair to say that your son's wife, your  
6 daughter-in-law, also has family in India still; is that  
7 correct?

8 A. I -- yes.

9 Q. Okay. And prior to all of this, your son did a  
10 bit of international travel, do you recall him traveling to  
11 Italy and China in 2019?

12 A. Yes, Italy I know, yes.

13 Q. And do you recall him traveling to Cambodia in  
14 2017?

15 A. We were not with him.

16 Q. Okay. And do you recall him traveling to Costa  
17 Rica in 2016?

18 A. We were not with him again.

19 Q. And then do you recall that he would often travel  
20 to medical conferences across the country on an annual  
21 basis?

22 A. Yeah. My husband does it too, sometimes they  
23 both will go. Sometimes I'll join them.

24 Q. Ma'am, you mentioned that -- that you had no idea  
25 about the allegations in this case. Did you ever know your

1 son to own a gun?

2 A. No, it was news to me. There are so many things  
3 I didn't know about him. You really don't know what he  
4 could do when you're not --

5 THE COURT: Excuse me, Mrs. Gupta, Mrs. Gupta --

6 A. Yes.

7 THE COURT: -- just answer the question that's  
8 asked, okay?

9 A. Okay. Thanks.

10 THE COURT: If it's anything that you and your  
11 son may have discussed or whatever, we understand, but just  
12 Mrs. -- Ms. Tangeman's questions will be pointed and  
13 direct, and so just answer the question.

14 A. Okay.

15 Q. Did you ever know him to be diagnosed with  
16 depression?

17 A. No.

18 Q. So if I were to tell you that he reported to  
19 Pretrial Services being diagnosed with depression four  
20 years ago, you would not -- you would not have been aware  
21 of that?

22 A. No.

23 Q. So then, therefore, I take it you never knew that  
24 he had been prescribed medication for depression and was  
25 seeing a counselor at one time?



1 A. (Nonverbal response.)

2 Q. Is that a no for the record? Now, you were asked  
3 about the allegations, and you said, and I quote, I can't  
4 even believe it now, he's not that boy. Fair to say it  
5 would be difficult for any mother to be in this situation,  
6 wouldn't you agree?

7 A. Uh-huh.

8 Q. Is that a yes for the record?

9 A. Yes.

10 Q. Okay. And you obviously love your son very much,  
11 don't you?

12 A. Yes.

13 Q. Okay. And obviously, as a mother, you would hate  
14 to see him put in harm's way, wouldn't you?

15 A. State again.

16 Q. You would hate to see him put in harm's way?

17 A. What does that mean?

18 THE COURT: That means you would hate to see him  
19 be in trouble or --

20 A. Oh yes.

21 THE COURT: -- or encounter something extremely  
22 difficult.

23 A. Yes.

24 Q. Now, in a jail phone call you told your -- you  
25 were talking to your son and he apologized to you, do you

1 remember that?

2 A. Yes.

3 Q. And you told him not to ever apologize. Do you  
4 remember saying that?

5 A. Yes.

6 Q. Can you tell me why you said that to him?

7 A. Yes. Because what good apology is? He should  
8 not do it if he did -- if he think he did something, which  
9 he would --

10 MR. FRIEDMAN: Objection, Your Honor, I think  
11 we're getting outside the scope.

12 THE COURT: I would agree.

13 MS. TANGEMAN: And Your Honor, I would submit  
14 that it goes to The Court's determination as to whether or  
15 not a violation would be reported.

16 THE COURT: I understand.

17 MS. TANGEMAN: And Your Honor, I have no further  
18 questions.

19 THE COURT: Okay. Mr. Friedman, anything  
20 further?

21 REDIRECT EXAMINATION

22 BY MR. FRIEDMAN:

23 Q. Just one question Ms. Gupta. So you were not  
24 aware of any alleged conduct, you're aware of the  
25 allegation now, and my question simply is if The Court

1 asked you to report anything that was in violation of the  
2 rules, would you do that today?

3 A. Yes, I would.

4 Q. Okay. Thank you.

5 MR. FRIEDMAN: Nothing further, Judge.

6 THE COURT: I have no questions.

7 MR. FRIEDMAN: Your Honor, with that last  
8 witness, we do not have any further questions.

9 THE COURT: Okay. I'll hear from you first,  
10 Mr. Friedman, and then Ms. Tangeman and perhaps yourself  
11 and --

12 MR. FRIEDMAN: Your Honor, I believe as we  
13 left -- and Ms. Tangeman, maybe I'm recalling it  
14 incorrectly or maybe it changed, did you have a witness you  
15 were calling?

16 THE COURT: I'm sorry, yes, you indicated that  
17 you were anticipating calling a witness. By all means, I  
18 apologize.

19 MS. TANGEMAN: That's okay, Your Honor. I would  
20 actually argue that the presumption has not been overcome,  
21 and I would ask that maybe argument be heard on that  
22 because if The Court finds that the presumption of  
23 detention, consistent with the pretrial recommendation for  
24 detention has not been overcome, then there would be no  
25 need for me to call the agent.

1 THE COURT: Okay, go ahead.

2 MS. TANGEMAN: Your Honor, I would submit that  
3 the presumption has not been overcome. This family seems  
4 like they are lovely people, but lovely people don't always  
5 know what's going on with their own family members. And it  
6 is notable in this case that neither the defendant's wife,  
7 nor his parents, ever knew, for example, the defendant was  
8 in possession or owned a gun. The defendant's family not  
9 only didn't know about his criminal conduct -- well, his  
10 parents that is, but they had no knowledge that he was sort  
11 of engaged in this separate life that went on for 14 years.  
12 The defendant was able to deceive them actively. His --  
13 his parents, understandably, believe the best in him, and  
14 the question is whether or not they would report a  
15 violation, or would acknowledge even seeing a violation to  
16 report it, or would they turn a blind eye to it, not with  
17 any mal intent or intent to break The Court's rules, but  
18 simply because that's what they did throughout the years  
19 with this defendant.

20 So for example, when the wife received a letter  
21 from a woman saying that -- and that woman being the victim  
22 in this case, saying that he had drugged and raped her, the  
23 defendant's wife took him at face value, took his denials  
24 at face value and even said that is not the man he is.

25 The defendant's father acknowledges the defendant

1 at no time owned a gun, and then he noted that in college  
2 he had a, quote, fascination with guns, and that the father  
3 told him not to keep a gun in the house in case he is  
4 depressed and he might use it against himself. These are  
5 very telling statements, and they are extremely alarming.

6 The Court would note that the parents didn't know  
7 about any mental illness or depression or depression  
8 medication. His wife claimed it was just a year ago when  
9 the kids left the house, but of course his son is 21, his  
10 son left the house years ago. And in fact, in the Pretrial  
11 Services report, the defendant reported he was diagnosed  
12 four years ago, not --

13 THE COURT: I think the daughter just left a  
14 year, she's 19 I think.

15 MS. TANGEMAN: Yes, correct, but the son was 21.  
16 And defendant reported to Pretrial Services that he had  
17 been on this medication for four years and had even started  
18 seeing a counselor during that time, and had stopped seeing  
19 that counselor and that medication six months before his  
20 arrest in March of this year. The -- the defendant -- the  
21 defendant and his wife, we would also note, did not -- they  
22 claimed to not know about this firearm and ammunition that  
23 was found in the house.

24 THE COURT: And I believe that. I do.

25 MS. TANGEMAN: And correct, and that may very

1 well be true, but I guess it begs the question for The  
2 Court that they didn't even know what their own son was up  
3 to, and their son had a gun and ammunition hidden in his  
4 parent's home, and, yet, he is being also proffered as a  
5 proposed custodian. I would just -- it's just a difficult  
6 position for a 21 year old to be in to report his own  
7 father who supports him. So I would note that as much as,  
8 again, the intent of a 21-year-old son may be all good, it  
9 puts him in an awkward situation. And of course we haven't  
10 heard from the 21 year old.

11 And we would also note that the parents are not,  
12 you know, they're not in the beginning of their lifetime.  
13 They are a bit older, and they are willing to move in with  
14 the defendant. However, the government has some concerns  
15 about the fact that the defendant was obviously more tech  
16 savvy than them, and of course these dates were arranged  
17 online. And with the means, the financial means he has, we  
18 appreciate that means he might be able to post property,  
19 but it also means that he could afford, for example, a fake  
20 passport and he could afford to travel. And lastly, we  
21 would note --

22 THE COURT: That would be difficult under today's  
23 conditions that they'll pass -- in terms of overseas  
24 flight.

25 MS. TANGEMAN: The government would also note

1     that while The Court has reviewed the victim's statement  
2     and understands her position, we would note that the  
3     defendant recorded her driver's license during the act,  
4     during the drugging and the raping. And we believe we  
5     found all electronic devices, but an SD card, a thumb  
6     drive, a Kodak memory card, those are very small. If the  
7     defendant did, in fact, copy the recordings that he made,  
8     including our victim, he would not only have the victim's  
9     identity, he would have her exact address. And while we  
10    understand that The Court may see this more as a  
11    nonappearance issue, we would express our concern about the  
12    risk to the community as well as his risk of flight or  
13    nonappearance.

14                 And Your Honor, I think for all of those, we  
15    would note, again, that the recommendation is for  
16    detention. And we would advocate that the presumption has  
17    not been overcome. Thank you, Your Honor.

18                 THE COURT: Mr. Friedman?

19                 MR. FRIEDMAN: Thanks, Your Honor. I listened to  
20    the government's position. And I'm not surprised that  
21    Mr. Gupta's parents were not aware that these were -- we  
22    talk about a gun, we're talking about college, 20, 30 years  
23    ago that a discussion was had. The language that is being  
24    called upon, I think, is subject to cultural issues  
25    certainly when his father says, no, we don't -- we don't

1 have guns and so forth and talked about the trouble one  
2 could get into. I think that's a generally-held belief  
3 that was not specific because there was no diagnosis at  
4 that time. If the -- you know, to say that the parents  
5 were not aware of any diagnosis, he's a grown man who, like  
6 many, would not be talking to his parents about getting a  
7 prescription for Lexapro. While in jail he's not been  
8 taking the Lexapro, and he's been perfectly fine.

9           The -- the thought about -- let me just pick up  
10 on turning a blind eye. You know, how many times have we  
11 stood in court, all of us, when family said I didn't know.  
12 I mean, more times than not the families are unaware of any  
13 conduct alleged at that time, but even if it came to  
14 fruition, they're not aware. But the issue here is they  
15 are aware, they've committed to counsel to fight this case.

16           He does not have a passport. Your Honor properly  
17 recognized that it is extremely difficult to travel at this  
18 time. And all three witnesses stated unequivocally that  
19 they would do what they needed to do if this Court placed  
20 any requirement upon them. So, again, it goes back when we  
21 talk about the need -- I hear on the one hand the  
22 government say we believe we have everything but there  
23 could be a thumb drive and an SD. All of those things  
24 could be solved, there's conditions that could be met to  
25 stop all of that.



1           But what's not changing, Judge -- actually, I  
2   take that back. What is changing is the rates of Covid.  
3   We saw what happened yesterday, our largest spike, it's  
4   gone on even since we last spoke Wednesday. How can  
5   counsel effectively prepare our client? And I think --  
6   well, in my opinion it's just like every other person  
7   that's been speculating. But at this point we're talking  
8   about a lengthy amount of time that a person presumed  
9   innocent is going to be sitting there unable to meet with  
10   counsel, unable to effectively prepare his case while  
11   presumed innocent. And this could be a year, two years, we  
12   don't know how long this is going to be. There are certain  
13   conditions that could be met. I mean, if The Court felt  
14   the only way to do that is to have a licensed security  
15   guard at the house at all times, that's something we'd be  
16   willing to do. There are a number of conditions to address  
17   any concerns that The Court has that we can meet, whether  
18   that's installing surveillance in the house in certain  
19   rooms in which he should stay, whether that's having  
20   security present, there's so many things that can be done.  
21   I don't think it's necessary, quite frankly, but the fact  
22   of the matter is, it is so exceptionally important that we  
23   have the ability to sit with our clients and not just have  
24   calls. And I know The Government's not listening to those  
25   calls, but it's impossible to prepare a case as well with

1 someone in versus someone who is out.

2 And you know, The Court brought up having him  
3 transferred and brought closer and closer and so forth. It  
4 doesn't solve any conditions. It doesn't matter if he's in  
5 Cuyahoga or Anchorage --

6 THE COURT: In thinking about that, I'm not sure  
7 that the government -- I can compel the government to --

8 MR. FRIEDMAN: Right.

9 THE COURT: -- put somebody someplace. And also  
10 it's not uncommon that we have defendants in Ohio who are  
11 resident closer to other cities or whatever, so that  
12 probably wouldn't work anyway. I probably couldn't  
13 accomplish that.

14 MR. FRIEDMAN: But, again, it just goes back to  
15 so now they're aware of the allegations, they've obligated  
16 themselves, and all of the concerns that are shown can be  
17 dealt with if they were to even occur. I've not heard  
18 anything that since that time he poses any greater threat  
19 than anybody else frankly.

20 The ID, you know, there is nothing there, and  
21 there's things that we can do to have the house completely  
22 cleaned and so forth. Like I said, we can go even as far  
23 as bringing security there that would report directly to  
24 The Court.

25 So with that said, Your Honor, when I think,

1 coupled with the fact of the needs for this person to be  
2 able to prepare under the circumstances that we've only  
3 faced once in this lifetime, it is imperative that the  
4 person be out. What if he were acquitted in this case? He  
5 would have been sitting in jail now, it will go on two  
6 years sitting there unnecessarily. So I'm -- sure, there  
7 is an indictment, and the government claims that the case  
8 is overwhelming, but that is certainly their opinion. That  
9 is fine. We've heard that before, and yet people are  
10 acquitted. Is it fair to keep him in, now presumed  
11 innocent, with Covid going up placing him at risk and not  
12 being able to fully prepare this case? I think not, and I  
13 leave that with The Court. Thank you, Your Honor.

14 THE COURT: Melissa, if you can send me and  
15 Yvonne to the breakout room, please.

16 MS. DYBALA: Judge, give me a moment.

17 THE COURT: Yeah, please.

18 (A brief recess was taken.)

19 THE COURT: Can you hear me? Are we out of the  
20 breakout room yet? Okay. Mr. Friedman, anything further,  
21 Ms. Tangeman?

22 MR. FRIEDMAN: Not at this time, Your Honor,  
23 other than as I stated, we can meet any condition and  
24 beyond that would address any of the government's concerns.

25 THE COURT: Well, I understand that. And

1 obviously I've given this a lot of thought, but I remain  
2 troubled, deeply troubled, by the possibility that at some  
3 point, typically given the guideline range, and, in all  
4 candor, based on what I know about the case so far, the  
5 evidence appears quite substantial, and I think that's  
6 appropriate for me to take that into consideration, and to  
7 balance the likelihood of a particular outcome against --  
8 simply in terms of the impact on somebody, particularly of  
9 his, you know, former stature, his accomplishments, I just  
10 don't think the presumption's been overcome. And I hope  
11 you can understand that he, and especially his family can  
12 understand, this is not an easy decision for me. I think  
13 recently -- Tracy can correct me, I know I've let someone  
14 out who was looking at a 15 year minimum mandatory  
15 sentence, and he's out. Tracey, have I let somebody with a  
16 20 year mandatory term out? I can't recall. It would  
17 surprise me if I have.

18 MS. TANGEMAN: I don't recall 15, but you did a  
19 case with a mandatory ten years.

20 THE COURT: Yes, but there was one that was 15 in  
21 Alissa's drug case, Negrin case, actually a principle  
22 defendant, mild actor, the brother of a main defendant.

23 But anyway, so Mr. Friedman, I want to be talking  
24 to you so if you can just say something, I think that's  
25 fair to see me as I pronounce -- Mr. Gupta, if you'll

1 please say something, I should be speaking to you and  
2 explaining to you my reasons for what is a devastating  
3 decision following a series of what I'm sure for your and  
4 also for your family, it's been a devastating series of  
5 events. But I really am concerned about the history of the  
6 diagnosis of depression, the prescribed medication, I  
7 realize he's not taking it now. I certainly would want him  
8 to be taking it were he out.

9 But -- and it may be awhile, Mr. Friedman,  
10 obviously until the case is resolved. And I understand  
11 exactly your contentions and your concern, but they're  
12 common place. Every defendant and every lawyer  
13 representing that defendant, particularly under today's  
14 dreadful conditions and circumstances, encounters the same  
15 problem you do. Whenever a man is in custody, a  
16 defendant's in custody, it makes the defense, preparing for  
17 the defense and presenting the defense much more difficult  
18 than when that person is available and can truly assist in  
19 the preparation of its own defense, meet with an attorney,  
20 obviously easier to follow the attorney's advice and  
21 directions about how and what he should do and how he  
22 should go about it. But I'm simply concerned, and there is  
23 a principle reason for my decision, that despite the -- the  
24 potential for serious and drastic financial consequences  
25 upon his wife and children, nonetheless, as time passes and

1 the hour approaches at which a bell of some sort will ring,  
2 and I don't think it's going to ring in a way that's  
3 welcome to him or his family, just given what I understand  
4 the evidence to be, that bears upon a man's mind. And  
5 looking potentially at spending the rest of one's life in  
6 prison, that at some hour, dark hour in the middle of the  
7 night doing something drastic, getting the car keys, going  
8 in the garage and turning the motor on, or simply leaving  
9 or whatever. And I don't think -- and I think that there's  
10 almost no way that that risk can be curtailed. I realize  
11 you have -- I've never heard that term proposed, but having  
12 somebody literally there outside the family there 24/7,  
13 which, on the other hand, even somehow some way within the  
14 house, I don't think it's beyond the realm of possibility  
15 to go down to the kitchen, take a knife, get in the  
16 bathtub, turn on the water. I really am concerned about  
17 that. That is my principal concern.

18           The risk of flight today certainly is less than  
19 it might otherwise be. I have no concern that he would be  
20 able to get on a plane and, you know, go to India or  
21 whatever. The family ties are there, but they don't appear  
22 to be the kind that people there would, you know, accept  
23 what he would have done to his family and welcoming and  
24 harboring.

25           So I do not believe the presumption has been

1 overcome. The conditions are very substantial, but  
2 nonetheless, bottom line, I don't think they are reasonably  
3 sufficiently to assure you are going to appear. I am less  
4 concerned about risk of flight than, oh, say, look,  
5 possibly 30 years and every day I'm home realizing that  
6 that possibility becomes closer and closer, and that the  
7 life that I have led, still leading in a small way, an  
8 important way, is about to come to an end. So the choice  
9 then is to have it end one way, or simply being torn from  
10 the life that remains to me after what has happened so far,  
11 or simply let this be it. I'm trying to be as honest and  
12 candid with you as possible.

13           You know you have a right to appeal. In your  
14 situation I would encourage my client to have you file a  
15 Notice of Appeal, which, as you know, you must do within 14  
16 days. I believe I stated my reasons on the record. I have  
17 considered all of the appropriate factors. In fact, I  
18 think I've gone beyond them. I don't think I've ever found  
19 a case in which the presumption has not been overcome.  
20 Ms. Tangeman, we deal with this all the time, and I don't  
21 think you've ever heard me say no, no, no, I find the  
22 presumption overcome, now let's take a look at the  
23 conditions. But in this case, the past, the nature of the  
24 evidence, the weight of the evidence, the likelihood of  
25 conviction, the difficulty that you encounter, as I say,

1 are unfortunately common place, and I understand them.  
2 It's among the factors that cause me, much more often than  
3 not, and very often over the government's opposition to,  
4 quote, take the chance. And in 40 years of doing this job,  
5 first as a Magistrate Judge and now District Judge, I've  
6 had only three people, maybe four people, on pretrial  
7 release fail to appear, and they were all apprehended. But  
8 in this case I'm not so much worried about risk of flight  
9 as I am about the risk of suicide. The risk of flight is  
10 there, but I think it's a much less concern to me, and  
11 under all the circumstances the risk of suicide -- and I'm  
12 trying to be very poynant on that so that the record, I  
13 would hope you would find sufficient, a sufficient basis  
14 for purposes of appeal. And if not, let me know if there's  
15 anything else you want me to touch upon.

16 And I'm concerned, too, quite candidly, that from  
17 all it appears, and I still maintain the presumption of  
18 innocence, but I think I have to look at the record as it  
19 comes to me now in making this decision, not any other  
20 decisions down the road. And certainly I hope you know my  
21 reputation well enough that what I say today would not  
22 affect what I do tomorrow in this case. I feel very  
23 strongly about the presumption of innocence, the right not  
24 to testify, the right to counsel. Ms. Tangeman can tell  
25 you that when she stands up and says good morning, ladies



1 and gentlemen, I represent the United States of America,  
2 when she's done I turn to the jury and I say, ladies and  
3 gentlemen, Ms. Tangeman says she represents United States  
4 of America, she does. Who are the United States of  
5 America? We are, you and I. She's our lawyer. Well,  
6 ladies and gentlemen, I'll point to the defense attorney,  
7 say ladies and gentlemen, the defendant's lawyer, that  
8 lawyer there, also represents all of us because he  
9 represents the Constitution and the rights that we all have  
10 to be presumed innocent, to a fair trial by an impartial  
11 jury, a jury of people of a mindset that you would want to  
12 be if you were in his place and sitting where he is.  
13 That's how strongly I feel about the Constitutional rights.  
14 I'm not sure many judges do that, but I try to make sure  
15 that the jury understands the defense -- the defendant is  
16 presumed innocent. The government has the burden of proof.  
17 He need not say or do anything. That's a right we all  
18 have. And most importantly, his lawyer represents me just  
19 as much as the government's lawyer. Ms. Tangeman, you've  
20 heard me say that, right?

21 MS. TANGEMAN: Yes, many times, Your Honor.

22 THE COURT: So I want you and your client and the  
23 family to understand that what I say about the weight of  
24 the evidence and the likelihood of conviction is fully for  
25 these purposes and will not affect what I do going forward.

1 He stands innocent until proven guilty by a jury that  
2 returns a unanimous verdict.

3 On the other hand, just to complete -- to  
4 conclude, I just am too concerned about the risk of suicide  
5 and nonappearance in that means to have that reasonable  
6 satisfaction. I don't have to be convinced, but a  
7 reasonable satisfaction that the conditions that are  
8 proposed are substantial and, to some extent, as unique as  
9 they are, simply are not sufficient to assure his  
10 appearance.

11 That being said, Mr. Friedman, is there anything  
12 further you would like me to stay with regard to my reasons  
13 or reasoning for purposes of appeal?

14 MR. FRIEDMAN: No, Your Honor. Thank you for the  
15 time you've afforded us. That's all I can do. You've  
16 obviously listened to everything, and we appreciate that.

17 THE COURT: That's my job. There are few easy  
18 decisions, and this certainly has been one of the most  
19 difficult decisions. It really is. I balance what, in my  
20 core, is so important to me. My default is out. And even  
21 in a case -- I've given it a lot of thought, I've discussed  
22 it with the terrific Pretrial Service Officer, but she has  
23 not made my mind up, and she will tell you in a heartbeat  
24 they don't make my mind up. I consult them, I listen to  
25 them, I take their considerations and viewpoints into

1 consideration, their concerns into consideration, but I  
2 make my own mind up.

3 So Mr. Gupta, you do have a right to appeal this  
4 decision. I urge you. You have very competent counsel.  
5 Undertake to do so if that's your choice and his choice.  
6 If you want to appeal my decision, you have 14 days within  
7 which to file a Notice of Appeal, or you will lose forever  
8 whatever right you might otherwise have to challenge what  
9 I've done here today.

10 Ms. Tangeman, is there anything further that you  
11 would want me to do with regard to stating my reasons in  
12 considering the various factors under the Bail Reform Act?

13 MS. TANGEMAN: No, Your Honor. Thank you.

14 THE COURT: And unless counsel think it  
15 otherwise, I believe that I have stated sufficiently on the  
16 record my reasons. If desired, I will, you know, transform  
17 those into a short opinion, but I think I've been as clear  
18 as I would be otherwise.

19 COURTROOM DEPUTY: Your Honor, this is Tina.  
20 Judge, could you ask the defendant if he consents for  
21 today's hearing by video?

22 THE COURT: Yeah, Mr. Gupta. Mr. Gupta, you have  
23 to speak.

24 THE DEFENDANT: Yes.

25 THE COURT: It's my understanding that you signed

1 a waiver to have these proceedings conducted in this  
2 manner, and that was your decision; is that correct?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Okay. Mr. Gupta, I don't know what  
5 to say, but I am sorry. I gave you and the proposed  
6 conditions and everything that your family and your  
7 remarkable lawyer -- I don't believe he's been in front of  
8 me, but his reputation precedes him. I'm delighted to have  
9 him in this case, and you've chosen well to have someone  
10 represent you. I'm sure he'll do a very, very good job.  
11 But I've tried to be as honest and as direct with you  
12 because you're the one to whom this matters the most. I  
13 know what the consequences are. I've given it every  
14 consideration, but I've stated my reasons. So you do have  
15 a right to appeal, and I hope you take it because three  
16 judges may see it otherwise, two judges may see it  
17 otherwise. So I would exercise that right if I were in  
18 your situation. Ms. Tangeman?

19 MS. TANGEMAN: Yes, Your Honor.

20 THE COURT: Okay. Once again, anything further?

21 MS. TANGEMAN: No, Your Honor.

22 THE COURT: Mr. Friedman?

23 MR. FRIEDMAN: No, Your Honor. Thank you very  
24 much.

25 THE COURT: Of course. Thank you, counsel. That

1 will conclude this proceeding. Thank you very much.

2 - - -

3 C E R T I F I C A T E

4

5 I certify that the foregoing is a correct transcript  
6 from the record of proceedings in the above-entitled matter.

7

8 s:/Angela D. Nixon July 14, 2020

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10 Angela D. Nixon, RMR, CRR Date

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